THE HON'BLE SRI JUSTICE C.V. RAMULU

Friday, 28th day of December,2007

W.P.Nos.17922 and 17926 of 2006

and

CONTEMPT CASE Nos.1003 and 1004 of 2007

W.P.No.17922 of 2006

Between:-

M. Malla Reddy … Petitioner

and

Andhra Bank, rep. by its
Chairman & Managing Director,
Saifabad, Hyderabad and others … Respondents

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.Nos.17922 and 17926 of 2006

and

CONTEMPT CASE Nos.1003 and 1004 of 2007

COMMON ORDER:

W.P.Nos.17922 and 17926 of 2006

In these two Writ Petitions common questions of law and fact arise for consideration; therefore, they are being disposed of by this common Order.

It appears, writ petitioners have retired from service on attaining age of superannuation i.e. 58 years. It is their grievance that they were not paid gratuity, provident fund, leave encashment and salary dues and, therefore, the action of respondents 1 and 2 in not paying retirement benefits to them is arbitrary, illegal and violative of Articles 14 and 21 of the Constitution of India.

While admitting the Writ Petition on 4-6-2007 an interim order was passed directing respondents 1 and 2 to consider for payment of terminal benefits, such as, provident fund, gratuity and leave encashment due to the petitioners as on the date of their retirement on attaining the age of superannuation. When the said orders were not complied with, contempt cases have been filed.

Though no counter is filed in the Writ Petitions, respondent No.3 has filed counters in the contempt cases. It is asserted that the Managing Committee has discussed the issue as to payment of arrears of salary to the petitioners and constituted a sub-committee consisting of 3 employees and 3 Managing Committee members of the

society, as per the Governmental Orders. Thus, the Managing Committee has taken a decision in their meeting held on 26-6-2007 regarding the pay scales and payment of salaries to the employees from the funds of the society i.e. fixed deposits. As per the directions of the District Cooperative Officer, Warangal, the Divisional Cooperative Officer, Mahaboobabad attended the meeting and issued a letter to the Managing Director of the Society and Branch Manager, Andhra Bank, Mahaboobabad vide letter Rc.No.609/2004-C, dated 22-9-2007 to implement the decision of the Managing Committee held on 24-8-2007 and permitted to utilize the fixed deposit to incur the expenditure towards pending salaries.

Learned counsel for the petitioners strenuously contended that the petitioners were not paid leave encashment (8 months salary) as per the leave to the credit of their accounts and even the provident fund was not paid as per the Regulations. Apart from that, the salary due for 20 months was also not paid.

Learned counsel appearing for the respondents submitted that the Writ Petition itself is not maintainable, since the Andhra Bank does not own the Society. Further, Miscellaneous Petitions under Section 33-C(2) of the Industrial Disputes Act,1947 (for short 'the Act') were filed by the petitioners seeking payment of salary due etc. Petitioners were already paid 180 days of earned leave salary, since that was only the leave available to the credit of the account of the petitioners and the same has been adjusted towards the advance salaries paid to them. Even if there is more than 180 days earned leave, that would lapse and as per the Rules, the petitioners are not entitled for encashment of earned leave beyond 180 days. Insofar as the provident fund is concerned, it is nothing to do with the respondents and it is between the petitioners and the Provident Fund

Commissioner. Regarding the gratuity, as per the assurance scheme, petitioners were paid the amount and as such, it cannot be said that they are entitled for further gratuity, leave salary etc.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the material made available on record.

Insofar as the salary due to the petitioners is concerned, it is already subject matter of M.Ps under Section 33-C(2) of the Act before the Industrial Tribunal. Therefore, this aspect need not be gone into in these Writ Petitions. Further, the respondents have nothing to do with the payment of provident fund to the petitioners. As such, this aspect also need not be gone into in these Writ Petitions.

Thus, the only question to be resolved is as to whether the gratuity paid to the petitioners is just and proper, whether the petitioners are entitled only for encashment of 180 days earned leave and whether the respondents are justified in adjusting the said leave encashment amount towards advance salary etc.

Learned counsel appearing for the 1st respondent relied upon Regulation 26 of the Staff Service Regulations,1988 of the Andhra Bank Farmers' Service Cooperative Society Limited, Korvi, which reads as under:

> "26. Terminal Benefits:
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> a) Provident Fund: Every employee will become a member of Provident Fund as per the provident fund Rules. The society shall contribute to the provident fund in accordance with the rules governing in the provident fund from time to time, provided that the amount contributed by it shall not be more than 12½% of the wages of the employee.
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> b) Gratuity: Every employee, who has completed one year of service shall be eligible for Gratuity on:

(I) RETIREMENT
(II) DEATH
(III) DISABLMENET rendered him unfit for further service as certified by a Government Doctor not less than the rank of Surgeon. The amount of Gratuity payable to an employee shall be (1) months wages for every completed year of service, subject to a maximum of 20 months wages. The society shall join with the Life Insurance Corporation of India under GROUP GRATUITY LIFE ASSURANCE SCHEME for the payment of gratuity amount as per the eligibility. The society shall bound to the rules and regulations of L.I.C. of India under the said scheme.

and submitted that in view of the above provision, petitioners are entitled for the amount under Group Gratuity Life Assurance Scheme and whatever is being paid by the Life Insurance Corporation, petitioners should accept the same. In these cases, a sum of Rs.50,000/- was paid under group gratuity life assurance scheme to each of the petitioners and they are entitled only for such amount and not anything more than that.

The contention of the respondents that the writ petition is not maintainable cannot be countenanced. The Society is sponsored by the Andhra Bank itself and its staff are Ex-Officio Director/s of the Society. Further, Andhra Bank has exercised control over the society. Under those circumstances, I am of the opinion that the Writ Petitions are maintainable against the 2nd respondent-Society.

A plain reading of the above Regulation would make it clear that the amount of gratuity payable to an employee shall be one month's wages for every completed year of service, subject to a maximum of 20 months wages. Further, it contemplates that the Society shall join with

the Life Insurance Corporation of India under group gratuity life assurance scheme for payment of gratuity amount as per the eligibility. This itself does not mean that the petitioners are not entitled for gratuity as per law and that they are entitled for gratuity as per the group gratuity life assurance scheme, i.e. Rs.50,000/- only. A reading of the said Regulations would indicate that the petitioners are entitled to one month's wages for every completed year of service, subject to a maximum of 20 months' wages. Therefore, it cannot be construed that once group gratuity life insurance scheme is introduced, petitioners are not entitled for 20 months wages as contemplated under the law. In fact, it must be construed otherwise, i.e., petitioners are not only entitled for 20 months wages, but also the amount of Life Insurance Corporation of India under Group Gratuity Life Assurance Scheme. Be that as it may, petitioners were paid only Rs.50,000/- each, whereas, they are entitled for 20 months wages, since they have put in more than 20 years of service.

Insofar as encashment of earned leave accrued to the account of the petitioners is concerned, it is the case of the respondents that the petitioners are entitled only for 180 days salary, since that was the only leave available to their credit and further the amount towards leave encashment of 180 days has been adjusted towards advance salaries paid to them. There is no dispute as to the drawing of advance salaries by the petitioners. Therefore, it cannot be said that the respondents have committed an error in adjusting the salary advance already paid to the petitioners towards leave encashment etc. However, if there is any dispute as to the leave encashment beyond 180 days, it is always open to the petitioners to make a representation before the respondents and the respondents shall consider the same, as per law and shall furnish the details of the leave available to each of

the petitioners and also shall calculate the amounts already paid towards advance salary etc. and furnish a detailed account of the amount due to them on this account i.e., encashment of earned leave.

In the result, the Writ Petitions are disposed of directing the respondents to pay gratuity amount, equivalent to 20 months wages as per Regulation 26(b) of the Regulations and also consider the representations filed by the petitioners insofar as encashment of earned leave is concerned, within a period of six weeks from the date of receipt of a copy of this Order. No order as to costs.

CONTEMPT CASE Nos.1003 and 1004 of 2007

In view of the Orders passed in the said Writ Petitions, the contempt cases are liable to be closed. Accordingly, the contempt cases are closed.

28-12-2007

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